

STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Kenneth L. Neely)
 Map 65, Control Map 65, Parcel 1.07) Rutherford County
 Residential Property)
 Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$57,000	\$ -0-	\$57,000	\$14,245

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on August 1, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on December 7, 2006, at the Rutherford County Property Assessor's Office. Present at the hearing were Kenneth L. Neely, the taxpayer who represented himself and John Barbee, Rutherford County Assessor of Property; Russell Key, Assessor's Office Staff Appraiser; Jerry Davenport, Chief Deputy Assessor, Jason Jones and Ed Deslotte also Residential Appraisers for the County.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a vacant parcel located on Herschel Hudson Road in Murfreesboro, Tennessee.

The taxpayer, Mr. Neely, contends that the property is worth \$5,200 based on the fact that the 8.14 acres of land was purchased in October of 2003 for \$28,480 or \$3,500 per acre. Mr. Neely testified that other property in Rutherford County sales for \$4,265 per acre. He further states when property has utilities (water and electricity) available to the land it makes it more profitable, his land has no availability for utilities. Mr. Neely stated that comparable lots (acreage/size) sale for an "average" per acre of \$4,265, because of the utilities and because his does not "it should be valued no more than \$4,000 per acre".

Mr. Key from the Assessor's Office contends that the subject property should be valued at \$59,600. In support of this position, three comparable sales were introduced and are marked as collective exhibit number 1, as part of the record in this cause. Mr. Key used comparable sales data and made appropriate adjustments for size and utilities to justify his value. Mr. Neely further testified that he has subsequently (April 2006)

purchased property in Rutherford County at "auction"¹ and paid only \$5,100 per acre for it and does not understand how his property could currently be valued at \$7,000 per acre almost tripled its previous assessed value.

The germane issue is the value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$57,000 based upon the presumption of correctness attaching to the decision of the Rutherford County Board of Equalization and the presentation by Mr. Key that shows that the data supports the value affixed by the Board.

Since the taxpayer is appealing from the determination of the Rutherford County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981)

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax year 2001, in quoting the Tennessee Supreme Court in the case of *Carroll v. Alsup*, 107 Tenn. 257, 64 S.W.193 (1901):

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own**, . . . (emphasis supplied)

With respect to the issue of market value, the administrative judge finds that Mr. Neely simply introduced insufficient competent evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). There are three (3) acceptable approaches in determining the market value of real property, income approach (usually reserved for income producing property); the cost approach using acceptable tables of reference using

¹ It has repeatedly been determined that sales at auction are distressed sales and not arm's length transactions.

Marshall and Swift cost tables and most favorable for residential property the sales comparison approach.

The administrative judge finds that **rather than averaging comparable sales, comparables must be adjusted**. As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is **presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value**. . . . (emphasis supplied) Final Decision and Order at 2.

In analyzing the arguments of the taxpayer, the administrative judge must also look to the applicable and acceptable standards in the industry when “comparing” the sales of “similar” properties as the taxpayer did here.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then **adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable**. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values. [Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001). *Andrew B. & Majorie S. Kjellin*, (Shelby County, 2005)

Mr. Neely did not meet his burden in this case.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$57,000	\$ -0-	\$57,000	\$14,245

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

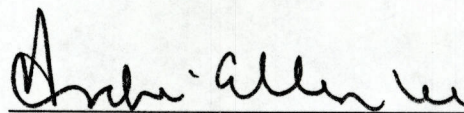
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of February, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Kenneth L. Neely
John Barbee, Assessor of Property